IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

FREDERICK H. GRUMBLEY,   )
)
         Plaintiff,   )
)
     vs.   )   No. CIV-12-1295-C
)
STATE OF OKLAHOMA,   )
)
       Defendant.   )

ORDER AFFIRMING REPORT AND RECOMMENDATION

This civil rights action brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Robert E. Bacharach, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Bacharach, sua sponte, entered a Report and Recommendation on November 29, 2012, recommending dismissal as the Defendant is immune from damages when sued in a federal court. Plaintiff has timely objected, taking no dispute with the State's immunity from damage claims, but instead pointing out that he also sought expungement and vacation of the void conviction and therefore should be permitted to amend. He has also included a motion to amend his pleadings with his objection.

To seek vacation of a void conviction, Plaintiff's only relief is through a petition for habeas corpus, not a claim for damages under civil rights laws. The habeas corpus action requires different and additional information than that provided in his present, or indeed even his proposed amended, Complaint. The dismissal of his § 1983 lawsuit will have no bearing

on his ability to bring a habeas corpus petition in this or any other court. Because Judge

Bacharach is absolutely correct that the State is immune from damages; because Plaintiff

takes no issue with this conclusion; and because the Complaint, on its face, may not be

maintained, and the proposed Amended Complaint may not be maintained under its current

jurisdictional allegations, dismissal is appropriate.

Accordingly, the Report and Recommendation of the Magistrate Judge is adopted, in

its entirety, and this action is dismissed without prejudice. Plaintiff's Motion to Amend is

DENIED.

IT IS SO ORDERED this 20th day of December, 2012.

ROBIN J. CAUTHRON
United States District Judge